

Message Text

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ACTION L-03

INFO OCT-01 ARA-16 ISO-00 SCA-01 JUSE-00 SS-20 NSC-10

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E. O. 11652: N/A

TAGS: PFOR CPRS BF

SUBJ: EXTRADITION: ROBERT L. VESCO - DAY FOUR

1. BEGIN SUMMARY: AS HEARING CREPT INTO ITS FOURTH DAY ON SNAIL'S FEET, MAGISTRATE HANDED DOWN SEVERAL PROCEDURAL RULINGS IN USG FAVOR AND THEN CALLED ON ASST US ATTORNEY JOHN LOWE TO GIVE HIS TESTIMONY IN PERSON RATHER THAN IN DEPOSITION FORM AS PLANNED. VESCO ATTORNEY'S CROSS-EXAMINATION OF LOWE CREATED RENEWED INTEREST IN INTRICACIES OF USG CASE. END SUMMARY.

2. NOV 16 HEARING SESSION OPENED WITH COMPLAINT BY WALLACE-WHITFIELD CONCERNING STORIES IN TODAY'S PAPERS RE YESTERDAY'S "SUPPRESSION OF EVIDENCE" AND "DISBARMENT" INCIDENT. WHITFIELD SAID STORIES SUGGESTED THAT AN ATMOSPHERE OF THREAT AND INTIMIDATION TOWARD HIMSELF AND HIS CLIENTS EXISTED IN THE COURTROOM AND THAT HE WOULD NOT TOLERATE DOUBTS CAST ON HIS PROFESSIONAL REPUTATION. MAGISTRATE OSADEBAY ASSURED WHITFIELD THAT HE HAD ONLY WANTED TO MAKE A GENERAL COMMENT ON ANY LAWYER'S RESPONSIBILITY FOR ACTIONS VIOLATING THE SANCTITY OF THE COURTROOM AND WAS NOT DIRECTING THEM AGAINST WHITFIELD. DUPUCH ALSO AFFIRMED HIS RESPECT FOR WHITFIELD'S PROFESSIONAL STATURE. WHITFIELD WENT ON TO SAY THAT "ANY ASPERSONS CASE ON THE CONDUCT OF THE USG WILL BE MOST SERIOUSLY REGARDED" BUT AGAIN THE MAGISTRATE DENIED THAT ANY

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HAD IN FACT BEEN CAST. MAGISTRATE INDICATED, HOWEVER, THAT

HE WAS NOT RESPONSIBLE FOR THE INACCURACIES AND MISREPRESENTATIONS MANUFACTURED BY NEWSPAPER REPORTERS.

3. HEARING PROCEEDED WITH DISCUSSION OF DEFENSE MOTIONS TO EXCLUDE CERTAIN PORTIONS OF RICHARDSON DEPOSITION. USG SIDE WAS PRESENTED BY PATRICK TOOTHE, WHITFIELD'S ASSISTANT COUNSEL IN THE CASE. ALMOST ALL OF OSADEBAY'S RULINGS ON ADMISSIBILITY WERE IN USG FAVOR, AND JUSTICE DEPT EXPERTS SAID LATER THAT ONE WHICH WENT AGAINST USG WAS NOT SIGNIFICANT. MAGISTRATE'S COMMENTS AT ONE POINT INDICATED POSSIBLE TROUBLE AHEAD FOR USG SIDE. WHEN TOOTHE OFFERED TO CURE AN ELEMENT OF HEARSAY IN ONE DEPOSITION BY SUBSTITUTING A NEW ONE, OSADEBAY INDICATED THAT WOULD NOT BE ACCEPTABLE SINCE WHITFIELD HAD PRESENTED DOCUMENTS TO COURT IN ONE PACKAGE AS "HIS CASE" AND COULD NOT NOW TAMPER WITH THE PACKAGE BY ADDITION, EXCISION OR SUBSTITUTION -- HOWEVER, MAGISTRATE DID NOT RULE ON QUESTION AT THIS POINT.

COMMENT: TOOTHE, A YOUNG, US-BORN LOCAL ATTORNEY, APPEARED TO GET ALONG WITH OSADEBAY BETTER THAN WHITFIELD HAS.

4. TOOTHE NEXT SOUGHT TO INTRODUCE DEPOSITION OF ASST US ATTORNEY JOHN LOWE ON LEGAL QUESTIONS, PARTICULARLY ON FACT THAT INDICTMENT AGAINST VESCO ESSENTIALLY ALLEGES FRAUD AND THAT USE OF WIRE IS NOT AN ELEMENT OF THE OFFENSE BUT MERELY A PEG FOR FEDERAL JURISDICTION. DUPUCH SUGGESTED THAT SINCE LOWE WAS IN COURTROOM HE BE CALLED TO TESTIFY IN PERSON. TOOTHE OBJECTED BY OSADEBAY RULED THAT "IN THE INTERESTS OF JUSTICE" HE WOULD PREFER LOWE'S ORAL TESTIMONY UNDER THE BEST EVIDENCE RULE. MORNING SESSION ENDED WITH LOWE'S READING OF HIS AFFIDAVIT, WHICH COMPRISES HIS EVIDENCE IN CHIEF.

5. THE AFTERNOON SESSION WAS OCCUPIED WITH DUPUCH'S CROSS-EXAMINATION OF LOWE. DUPUCH BEGAN BY ATTEMPTING TO CAST DOUBT ON LOWE'S EXPERT QUALIFICATIONS. HE THEN WENT ON TO POINT OUT THAT 18 USC 1343 CONTAINED TWO ELEMENTS, FRAUDULENT SCHEME AND USE OF WIRE, NEITHER OF WHICH WAS A FEDERAL CRIME IN ITSELF. HE THEN CONTENDED THAT 1343 LANGUAGE, "HAVING DEVISED" A FRAUDULENT SCHEME, WAS IN PAST TENSE, INDICATING IT WAS NOT ESSENCE OF OFFENSE, BUT THAT USE OF THE WIRE WAS -- WHICH LIMITED OFFICIAL USE

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LOWE DENIED. DUPUCH ARGUED THAT IT WAS ABSURD TO ARGUE THAT THE ESSENCE OF A FEDERAL CRIME (I.E., DEVISING FRAUDULENT SCHEME) WAS NOT ITSELF A FEDERAL CRIME. ISN'T AN OVERT ACT NECESSARY TO CONSTITUTE FRAUD AND ISN'T THAT OVERT ACT HERE USE OF THE WIRE? HOW THEN CAN IT NOT BE ESSENTIAL? LOWE REPLIED THAT IT WAS ESSENTIAL FOR JURISDICTION BUT NOT FOR GUILT. LOWE EXPLAINED AT SOME LENGTH THE SYSTEM OF DUAL JURISDICTION IN THE US. DUPUCH BEGAN A LONG SERIES OF REF-

ERENCES TO FEDERAL CASES IN AN APPARENT ATTEMPT TO SHOW THAT SECTION 1343 CREATES AN OFFENSE WHICH WOULD NOT BE PUNISHABLE UNDER EITHER STATE OR COMMON LAW DEFINITIONS OF FRAUD (AND, PRESUMABLY, THUS NOT PUNISHABLE UNDER BAHAMIAN LAW). HE WAS INTERRUPTED BY ADJOURNMENT OF SESSION UNTIL 2:00 P.M. MONDAY, NOV 19 (DELAY IS TO ALLOW JUSTICE EXPERTS AND US COURT REPORTER TO RETURN FROM WEEKEND TRIPS TO THE US, AND IN CONTRAST TO LAST TUESDAY'S HEARING, THIS TIME IT WAS VESCO WHO OBJECTED TO DELAY BECAUSE, HIS ATTORNEY SAID, HE DIDN'T WANT THIS PROCEEDING "HANGING OVER HIS HEAD" ANY LONGER THAN NECESSARY). SPIERS

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